



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/732,742

12/10/2003

Todd M. Bjork

M81.12-0067

6671

27367 7590 08/21/2008
WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3244

EXAMINER

WOOD, KIMBERLY T

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

08/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 3632

This is an office action for serial number 10/732,742.

Election/Restrictions

Applicant's election without traverse of Species I in the reply filed on July 16, 2007 is acknowledged.

Claims 3, 4, 9, 12, 17, 19, and 25 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 16, 2007.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7, 13-15, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobrovolny 6,042,541 in view of Tashiro 4,599,011. Dobrovolny discloses a rod (102), a housing/receiving unit (104) or a clamping mechanism (108)

Art Unit: 3632

having a bore/socket, a force providing/actuating mechanism (110), a handle (118). Dobrovolny discloses all of the limitations of the claimed invention except for the rotatable wedge. Tashiro discloses a clamp housing (21) having a internal cavity (through the center), a force providing/actuating mechanism (11) having a rotatable wedge (14), a surgical rod member (2). It would have been obvious to one having ordinary skill in the art to have modified Dobrovolny to have modified the clamp to have the clamp housing and force providing/actuating mechanism as taught by Tashiro for the purpose of providing a better means of attaching the members together.

Allowable Subject Matter

Claims 5, 10, 11, 18, 22, 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed May 6, 2008 have been fully considered but they are not persuasive.

In response to applicant's argument that Tashiro is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tashiro is within the field of the applicant's endeavor since Tashiro is within the art of clamping devices. Tashiro is also reasonably pertinent to the particular problem with which the applicant is concerned which is to provide a force providing mechanism (rotatable wedge (14 of Tashiro)) that moves to secure an apparatus (31) to a clamping mechanism (21 of Tashiro).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., surgical device or surgical apparatus) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 571-272-6826. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver can be

Art Unit: 3632

reached on 571-272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly T. Wood/
Kimberly T. Wood
Primary Examiner
Art Unit 3632

August 18, 2008